

Hearing Date: November 10, 2009
Hearing Time: 11:00 a.m.

BLANK ROME LLP
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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
In re: :
: :
CHIYODA AMERICA, INC., : Case No. 09-15059 (AJG)
: Chapter 11 Case
Debtor. :
----- X

**NOTICE OF HEARING ON DEBTOR’S FIRST MOTION TO ASSUME CERTAIN
EXECUTORY CONTRACTS AND UNEXPIRED LEASES
PURSUANT TO §§ 365 AND 1123 OF THE BANKRUPTCY CODE**

PLEASE TAKE NOTICE, that on October 16, 2009, Chiyoda America, Inc. as debtor and debtor-in-possession (the “Debtor”), filed the Debtor’s Motion To Assume Certain Executory Contracts and Unpaid Leases Pursuant To §§ 365 and 1123 Of The Bankruptcy Code (the “Motion”). **Parties receiving notice of the Motion should review the Motion and Exhibit “A” thereto to determine whether their rights are affected by the Motion.**

PLEASE TAKE FURTHER NOTICE, that if you object to the relief sought in the Motion, your response must be made in writing and electronically filed with the Clerk of the Bankruptcy Court in accordance with the Order Pursuant To Section 105(a) Of The Bankruptcy Code And Bankruptcy Rules 1015(c) And 9007 To Authorize Certain Notice And Case

Management Guidelines (the "Case Management Order") by **4:00 p.m. on November 5, 2009** (the "Response Deadline").

PLEASE TAKE FURTHER NOTICE, that a copy of the response must also be served by the Response Deadline upon the undersigned counsel and parties required to receive notice under the Case Management Order.

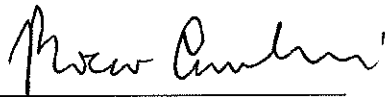
PLEASE TAKE FURTHER NOTICE, that failure to timely file a response prior to the Response Deadline pursuant to the foregoing procedures may result in the Court's entry of the order granting the relief requested in the Motion.

PLEASE TAKE FURTHER NOTICE, that there will be a hearing (the "Hearing") on the Motion on **November 10, 2009 at 11:00 a.m.** before the Honorable Arthur J. Gonzalez, United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004.

PLEASE TAKE FURTHER NOTICE, that the Hearing may be adjourned from time to time without notice to any creditor or any other party in interest other than by announcement of the adjourned date in open Court, or on the daily calendar maintained by the Court, on the date of the Hearing.

Dated: October 16, 2009

BLANK ROME LLP

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**DEBTOR'S FIRST MOTION TO ASSUME CERTAIN
EXECUTORY CONTRACTS AND UNEXPIRED LEASES
PURSUANT TO §§ 365 AND 1123 OF THE BANKRUPTCY CODE**

TO THE HONORABLE ARTHUR J. GONZALEZ
UNITED STATES BANKRUPTCY JUDGE:

Chiyoda America, Inc. as debtor and debtor-in-possession (the "Debtor" or the "Company") in this chapter 11 case, hereby files this motion (the "Motion") to assume certain executory contracts and unexpired leases pursuant to §§ 365 and 1123 of Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). In support of the Motion, the Debtor respectfully states as follows:

BACKGROUND

The Bankruptcy Case

1. On August 19, 2009 (the "Commencement Date"), the Debtor filed its case under chapter 11 of the Bankruptcy Code in this Court. The Debtor is authorized to continue to operate

its business and manage its properties as a debtor in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

2. No trustee or committee of unsecured creditors has been appointed in this case.

3. On the Commencement Date, the Debtor filed all necessary pleadings in connection with the Chapter 11 case, including, without limitation, all required first day motions, schedules and statements of financial affairs, a plan of reorganization (the “Plan”, as amended), and a motion for, among other things, approval of a disclosure statement (the “Disclosure Statement”, as amended), and voting and objection procedures in connection with the Plan (the “Disclosure Statement Motion”). The Debtor later received comments to the Disclosure Statement and Plan from the Office of the United States Trustee and other major parties in interest and thereafter, on October 6, 2009, filed amended versions of the Disclosure Statement [Docket No. 66] and Plan [Docket No. 64], incorporating such comments. On October 7, 2009, the Court entered an order which among other things, (i) approved the Disclosure Statement, (ii) established procedures for voting on the Plan, and (iii) scheduled the hearing to consider confirmation of the Plan for November 10, 2009 at 11:00 a.m. (the “Confirmation Date”).

4. The Plan provides for a 100% recovery to unsecured creditors, excluding certain related entities who are releasing claims aggregating more than \$33 million. Furthermore, Section 8.1 of the Plan states that all executory contracts and unexpired leases which are not the subject of a motion to assume pending the Confirmation Date shall be rejected. The Debtor is filing this Motion pursuant to the Plan and therefore notifying certain counterparties that their executory contracts and unexpired leases are being assumed by this Motion, as contemplated by the Plan.

The Debtor's Business

5. The Company was organized in 1987 as a Pennsylvania corporation and is a wholly owned subsidiary of Chiyoda Gravure Corporation ("Parent"), a Japanese corporation. The Company manufactures and distributes quality gravure printed products for sale to industrial customers located throughout the United States and Canada.

6. The Company primarily prints for kitchen countertop and laminated floor manufacturers, kitchen and bath cabinet manufacturers and ready to assemble furniture makers. The Company also acts as the distributor in the Western Hemisphere for the products manufactured by its European affiliate and the Parent (and receives a commission on each sale).

7. The Company has 59 employees (non-unionized). The gravure printing industry requires highly specialized equipment. The Company believes its market share is approximately 15%; provided, however, such amount is highly volatile and fluctuates based upon home sales.

8. As more fully set forth in the First Day Declaration of Hiroshi Mizumoto¹ pursuant to Local Bankruptcy Rule 1007-2 (the "Mizumoto Declaration"), the causes which gave rise to the need to seek relief under Chapter 11 are numerous. First, commencing in 2002, a shareholder dispute erupted which caused many suppliers and customers to proceed in a fashion which did not maximize the Company's abilities. The shareholder dispute was finally resolved by a confidential stipulation reached in a Tokyo Court on May 30, 2008. Second, cheaper imports from China have caused a reduction in the Company's market share. Third, several of the Company's customers have had their own significant financial difficulties during the last eighteen months which has resulted in a decrease of business and write-downs of accounts receivable. Lastly, the recent violent downturn in the building and real estate markets have had a significant impact on the Company's operations.

¹ The Mizumoto Declaration is incorporated herein by reference as if fully set forth herein.

9. As of September 30, 2008, the Debtor's unaudited financial statements reflected assets totaling approximately \$21 million and liabilities totaling approximately \$44 million.

JURISDICTION

10. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested in this Motion are §§ 365(a) and (b) and 1123(b)(2) of the Bankruptcy Code and Rule 6006 of the Federal Rules of Bankruptcy Procedure.

RELIEF REQUESTED

11. By this Motion, the Debtor respectfully requests that pursuant to § 365(a) and (b) and 1123(b) of the Bankruptcy Code, the Court allow the Debtor to assume the executory contracts and unexpired leases (collectively, the "Contracts") reflected in Exhibit "A" to the Motion, and cure any defaults under such Contracts as set forth in Exhibit "A" conditioned upon the occurrence of the Effective Date under the Plan. **Parties receiving notice of this Motion should review Exhibit "A" to determine whether their rights are affected by this Motion.**

BASIS FOR RELIEF REQUESTED

12. Section 365(a) of the Bankruptcy Code states, in relevant part, "the trustee, subject to the Court's approval, may assume or reject any executory contract or unexpired lease of the Debtor." The Court uses a business judgment standard to determine whether to approve assumption or rejection of a contract or lease. See In re Klein Sleep Prods., 78 F.3d 18 (2d Cir 1996); see In re Riodizio, Inc., 204 B.R. 417, 424 (Bankr. S.D.M.Y. 1997) ("[A] court will ordinarily defer to the business judgment of the debtor's management"). Further, § 1123(b)(2) specifically provides that the Plan may "subject to § 365 of this title, provide for assumption...of

any executory contract or unexpired lease of the Debtor not previously rejected under such section.”

13. Section 365(b) of the Bankruptcy Code sets forth the following requirements that a debtor in possession must satisfy before it may assume an executory contract or unexpired lease:

- (b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee –
 - (A) cures, or provides adequate assurance that the trustee will promptly cure, such default...;
 - (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract..., for any actual pecuniary loss to such party resulting from such default; and
 - (C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1); see also In re ANC Rental Corp., Inc., 277 B.R. 226 (Bankr. D. Del. 2002) (“Having met the threshold requirement of a sound business purpose, the Debtors must also cure any existing defaults and provide adequate assurance of future performance of the assigned contracts”).

14. Section 365 of the Bankruptcy Code authorizes the proposed assumption of the Contracts, provided that any defaults under the Contracts are cured and adequate assurance of future performance is given. See generally In re Health Science Prods., Inc., 191 B.R. 895 (Bankr. N.D. Ala. 1995) (ability to make current payments on contract combined with projected future financial stability constituted “adequate assurance”); In re Mako, Inc., 102 B.R. 818 (Bankr. E.D. Okla. 1988) (willingness and ability to cure defaults and projected cash flow

sufficient to meet obligations under the contract met the “adequate assurance” requirement); In re Lafayette Radio Electronics Corp., 12 B.R. 302, 310 (Bankr. E.D.N.Y. 1981) (finding adequate assurance through the debtor’s renewed viability that showed sufficient income to cover the lease to be assumed); In re Shelco, Inc., 107 B.R. 483, 487 (Bank. D. Del. 1989) (finding that “a realistic possibility of an effective reorganization” provides adequate assurance).

15. Assumption of the Contracts by the Debtor in this case complies with the requirements of section 365 of the Bankruptcy Code.

16. First, the Debtor, in its business judgment, has determined that the Contracts listed on Exhibit “A” to this Motion are important and essential to the future operation of the Debtor’s business after confirmation of the Plan. In making this determination, the Debtor, together with its financial advisor, evaluated the benefits and burdens of each of the Contracts and determined that the Contracts are valuable and that it would be in the Debtor’s best interest to continue to receive the benefits of such Contracts after confirmation of the Plan.

17. Second, as set forth in the Plan, the Debtor shall pay each counterparty to the Contracts on Exhibit “A” their respective cure costs as listed in Exhibit “A” within twenty days of the Effective Date of the Plan. By satisfying the cure costs in a prompt fashion, the Debtor has satisfied the requirement of section 365(b)(1)(A). To the extent that any counterparty disagrees with the proposed cure cost in Exhibit “A”, such counterparty must file an objection to the proposed assumption of their contract or be deemed to consent to the proposed cure amount in Exhibit “A”.²

18. Finally, the Debtor has satisfied the requirement of adequate assurance of future performance under the statute. The Debtor has provided adequate assurance by filing the Plan to

² The Debtor will attempt to resolve any objections prior to the hearing to consider the Motion, and reserves the right to adjourn the hearing to consider the Motion as it relates to any and all Contracts.

restructure the Debtors' liabilities to maximize recovery to all stakeholders and enhance the financial viability of the Debtor. As set forth in the Plan and the accompanying disclosure statement, the Plan will provide, among other things, significant balance sheet relief for the Debtor resulting in the waiver of over \$33 million in debt. In addition, while the Debtor has ample cash flow and liquidity to meet their monthly obligations, the Plan also contemplates an exit facility of \$7,500,000.00 which will serve as a backstop for working capital. The Exit Facility (as defined in the Plan), together with the Debtor's sales revenue, will be more than sufficient to allow the Debtor to make timely payments under the Contracts, and therefore, satisfy the requirement of adequate assurance of future performance.

19. As a result of the foregoing, all of the requirements of Section 365(b) have been met.

Reservation

20. The Debtor expressly reserves all of its rights and further reserves the right to remove or add any Contract to Exhibit "A" at any time prior to the Confirmation Date, in which event such Contract shall be deemed to be, respectively, either rejected or assumed as of the Effective Date. Further, the Debtor reserves the right to adjourn the hearing on the Motion as it relates to any of the Contracts.

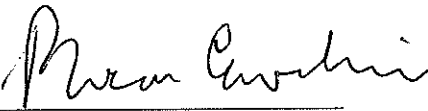
Notice

21. Notice of this Motion has been provided to: (a) the Office of the United States Trustee, (b) all parties referenced in Exhibit "A" to this Motion, and (c) all parties required to be served under the Case Notice and Management Guidelines Order. In light of the nature of the relief requested herein, the Debtor submits that no further notice is necessary.

WHEREFORE, the Debtor respectfully requests that the Court enter an order, substantially similar to the form of order attached hereto as Exhibit "B", granting the relief requested in the Motion and such other and further relief as is just and proper.

Dated: October 16, 2009

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By: 

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Attorneys for Debtor and Debtor-in-Possession

EXHIBIT "A"

<u>Contract Counterparty</u>	<u>Counterparty Address</u>	<u>Description of Contract or Lease</u>	<u>Cure Amount</u>
ADT Security Services	P.O. Box 371967 Pittsburgh, PA 15250-7967	Building Alarm System Agreement	\$0.00
Aramark Uniform Services	989 Ranck Mill Road Lancaster, PA 17602-0000	Uniform Rental Agreement	\$0.00
Carrier Corp	5060 Ritter Road Mechanicsburg, PA 17055-0000	Service Contract for 390 ton Chiller System for Plant	\$0.00
Coyne Textile Services	3500 W. Market St. York, PA 17404-0000	Towel Rental and Cleaning Agreement	\$0.00
D&E Communications	124 East Main Street Ephrata, PA 17522-0000	(a) PRI Service Agreement and Internet and (b) Long Distance Service Agreement	\$0.00
Ebersole Dedicated Services	710 Main Street P O Box 278 New Holland, PA 17557-0000	Warehouse Lease	\$0.00
Energy Solutions	2386 Dahlk Circle Verona, WI 53593-0000	Natural Gas Consulting Service Agreement	\$0.00
Forrest Branham	971 Scotland Drive Mount Pleasant, SC 29464-0000	Independent Contractor Agreement	\$0.00
Fraser Advanced Info Systems	P.O. Box 790448 Saint Louis, MO 63179-0448	Fax Machines Agreement	\$0.00
Grand Central Business	708 3rd Ave New York NY 10017-0000	Office Lease	\$0.00
Hess Corporation	One Hess Plaza Woodbridge, NJ 07095-0000	(a) Gas Demand Response Contract and (b) Gas Contract	\$0.00
IBM Corp	P.O. Box 643600 Pittsburgh, PA 15264-3600	Main Frame Computer	\$0.00
Iron Mountain	P.O. Box 27128 New York, NY 10087-7128	Storage Facility Lease Agreement for Paperwork/Records	\$0.00
ITS Mailing System	Hasler Financial Services 1020 E. Main Street Norristown ,PA 19401-0000	Postage Meter Agreement	\$0.00
Lease Associates	P.O. Box 5821 Wyomissing, PA 19610-0000	Copier Lease Agreements	\$0.00

<u>Contract Counterparty</u>	<u>Counterparty Address</u>	<u>Description of Contract or Lease</u>	<u>Cure Amount</u>
Peak Technologies	P.O. Box 8500 (S-4955) Philadelphia, PA 19178-4955	Service Contract for Thermal Printer in Inspection Dept.	\$0.00
Roberto Mandanici	12 Vista Road Wyomissing, PA 19610-0000	Apartment Lease	\$0.00
Stratix	1011 N. Park Rd. Wyomissing, PA 19610-0000	Copier Lease Agreements	\$0.00
UtiliTech, Inc.	3020 Penn Ave. West Lawn, PA 19609-0000	(a) Bill Audit Services Agreement and (b) Energy Procurement Services Management Agreement	\$0.00
Water Treat USA	1020 Industrial Blvd. Southampton, PA 18966-0000	Agreement for Rental Equipment for Water Softener System	\$0.00

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

----- x
In re: :
: :
CHIYODA AMERICA, INC., : Case No. 09-15059 (AJG)
: Chapter 11 Case
Debtor. :
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**ORDER GRANTING DEBTOR’S FIRST MOTION TO
ASSUME CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED
LEASES PURSUANT TO §§ 365 AND 1123 OF THE BANKRUPTCY CODE**

Upon the Debtor’s Motion To Assume Certain Executory Contracts And Unexpired Leases Pursuant To §§ 365 and 1123 Of The Bankruptcy Code (the “Motion”); upon consideration of the Motion and upon the hearing (the “Hearing”) held before the Court to consider the relief requested in the Motion; and after consideration of all responses and objections to the Motion; and proper and sufficient notice of the Motion, the relief requested therein and the Hearing have been given, and no further notice being required; and due deliberation having been had and sufficient cause appearing therefor; it is

ORDERED, that the relief requested in the Motion is granted as set forth herein; and it is further

ORDERED, that the Contracts listed on Exhibit “1” to this Order shall be assumed by the Debtor in accordance with § 365 of the Bankruptcy Code conditioned upon the occurrence of the Effective Date under the Debtor’s First Amended Plan of Reorganization dated October 6, 2009 [Docket No. 64]; and it is further

ORDERED, that the Debtor is directed to pay the cure costs reflected on Exhibit “1” to the counterparties to the Contracts within 20 days of the Effective Date of the Plan; and it is further

ORDERED, that failure to object to the Motion shall be deemed consent to the assumption of the Contracts and the payment of the cure costs associated therewith, as set forth on Exhibit "1" to this Order; and it is further

ORDERED, that a hearing to resolve any further disputes regarding the cure amounts due and owing by the Debtor is hereby scheduled for December [], 2009; and it is further

ORDERED, that this Court shall retain jurisdiction with respect to any matters arising from or related to this Order.

Dated: New York, New York
November __, 2009

HONORABLE ARTHUR J. GONZALEZ
UNITED STATES BANKRUPTCY JUDGE

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